

Envoys must respect local laws



Malaysia declared North Korean ambassador Kang Chol persona non grata

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On March 4, Malaysia declared North Korean ambassador Kang Chol persona non grata and gave him 48 hours to leave the country. This article briefly explains the concept of persona non grata in the context of diplomatic relations in international law.

In international law, diplomatic relations are established by the mutual consent of two states: the sending state and receiving state. This is provided for under Article 2 of the Vienna Convention on Diplomatic Relations (VCDR). Diplomatic relations may, however, be broken unilaterally often as a mark of disapproval of an illegal or unfriendly act of one of the parties, or the receiving state may declare the head or any member of the diplomatic mission persona non grata if it wishes so.

When an envoy is declared persona non grata by the receiving state, he is no longer welcome in that state. The sending state has to recall the unwelcome envoy from the territory of the receiving state, otherwise, the receiving state may refuse to recognise the person concerned as a member of the mission and, thereafter, expel him from its territory without even giving reason or justification for its decision. This is what international law on diplomatic relations stipulates.

Article 9 of the VCDR provides the receiving state the right to notify the sending state that any member of the diplomatic staff is considered persona non grata at any time, including before arrival. After being notified, the sending state must either recall the unwelcome diplomat or terminate his or her functions. If the sending state refuses or fails within a reasonable period, the receiving state may consider the diplomat an ordinary person, thus depriving him of diplomatic immunities and privileges, and expel him.

The expulsion of a foreign diplomat can be in response to the abusive behaviour of the diplomat towards the host state, such as the intervention of the diplomat in the internal affairs of the host country or when the diplomat abuses his privileges and immunities by breaching the local laws, such as getting involved in minor or serious offences like drugs or human trafficking or spying the military, political or economic secrets of the host state.

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Article 41 of the VCDR makes it a duty upon the foreign diplomats enjoying privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty to not interfere in the internal affairs of that state. They should remember that diplomatic immunity is not a licence to breach the laws of the receiving state or to interfere in its internal affairs.

A foreign diplomat can also be expelled by the receiving state due to the action of the sending state, irrespective of the diplomat's behaviour. In this case, the expulsion of a diplomat is a sign of protest against the sending state policy vis-a-vis the receiving state. Recently, the United States expelled 35 Russian diplomats and closed two Russian diplomatic compounds in its territory in response to Russia's "campaign of intimidation of American diplomats in Moscow and interference in the US election".

Normally, the sending state reciprocates by expelling the diplomat of the receiving state from its territory, which is known as a tit-for-tat exchange. In the case of the diplomatic row between the US and Russia, the latter did not resort to a tit-for-tat action.

Malaysia's decision to declare Kang Chol persona non grata and give him 48 hours to leave the country is its sovereign right. This is in accordance with the international legal regime relating to diplomatic immunity. In fact, Articles 9 and 41 of the VCDR enable Malaysia, as a receiving state, to protect itself against unacceptable behaviours of members of diplomatic missions and form an important counterweight to the immunities conferred elsewhere in the VCDR.

The North Korean ambassador's statement that "Malaysia's investigation into the murder of Kim Jong-nam could not be trusted" amounts to disrespect of local laws and regulations, and is also an interference in the internal matters of Malaysia and thus constitutes an abuse of his diplomatic privileges and immunities.

In spite of this, Malaysia rightly demanded an apology from him, but did not receive one and when he was summoned by Malaysia's Foreign Ministry to give an explanation, he failed to turn up. This means his insulting behaviour is the cause of his expulsion.

In any case, Malaysia, as a sovereign state, is under no obligation to explain its action.

PROF DR MOHAMMAD NAQIB ISHAN JAN, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Selangor

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